

**THE DEPARTMENT OF TRANSPORTATION**  
**THE FEDERAL AVIATION ADMINISTRATION**

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**OPERATING LIMITATIONS AT  
NEW YORK LAGUARDIA AIRPORT**

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) **Docket No. FAA-2006-25755**  
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**FINAL ORDER**

On September 11, 2006, the FAA issued a proposed order, which requested written views on the FAA's tentative determination to place temporary limitations on flight operations at New York's LaGuardia Airport (LaGuardia). The temporary limits are intended to prevent the congestion-related delays that would otherwise occur during the interval between the expiration of the High Density Rule and the effective date of a long-term regulation. In response to comments, the FAA is issuing a final order (the Order) that adopts the proposed limitations with some modifications. The limitations will permit 75 scheduled and six unscheduled operations per hour between 6:00 a.m. through 9:59 p.m., Eastern time, Monday through Friday and from 12:00 noon through 9:59 p.m., Eastern time, on Sundays.

I. Background

LaGuardia's runway capacity cannot accommodate the number of flight operations that carriers would like to operate without the development of significant

congestion. Rules adopted by the FAA have long limited the number of LaGuardia operations during peak demand periods. By statute enacted six years ago, those rules will terminate as of January 1, 2007. The FAA has proposed a long-term rule in a separate docket that would limit the number of scheduled and unscheduled operations at LaGuardia.<sup>1</sup> We are currently soliciting comments on that notice of proposed rulemaking. Because the FAA will be unable to complete that rulemaking by January 1, carrier operations at LaGuardia would be unrestricted unless the FAA adopts temporary limits that will remain in place until the rulemaking's completion. Without such operational limitations, the FAA expects that severe congestion-related delays will occur, both at LaGuardia and at other airports throughout the National Airspace System (NAS) as a result of capacity constraints at LaGuardia. The FAA therefore has proposed to adopt short-term limitations on LaGuardia flights while that rulemaking is completed, and, after considering the comments, is issuing this final Order limiting LaGuardia operations.

The FAA's authority to limit the number of flight operations at LaGuardia is an essential component of the FAA's statutory responsibilities.<sup>2</sup> The FAA holds broad authority under 49 U.S.C. § 40103(b) to regulate the use of the navigable airspace of the United States. This provision authorizes the FAA to develop plans and policy for the use of navigable airspace and, by order or rule, to regulate the use of the airspace as necessary to ensure its efficient use.

As a result of LaGuardia's history of congestion-related delays, the FAA, over the course of nearly forty years, applied increasingly detailed rules to govern the allocation

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<sup>1</sup> Docket FAA-2006-25709.

<sup>2</sup> No one commented on the FAA's statutory authority to adopt an Order limiting flights at LaGuardia.

and use of the limited capacity at the airport.<sup>3</sup> These regulations, collectively known as the High Density Rule (HDR) and the Buy-Sell Rule (or slot rules), effectively controlled congestion at LaGuardia. In 2000, however, out of concern with the collateral effects of the slot rules at LaGuardia on airport access and competition, Congress included a provision in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) that terminates the LaGuardia slot rules as of January 1, 2007.<sup>4</sup> Congress simultaneously directed the U.S. Department of Transportation, effective immediately, to grant exemptions from the HDR for flights that would serve small hub and non-hub airports with aircraft with less than 71 seats and to grant a limited number of applications for slot exemptions from new entrant and limited incumbent carriers.<sup>5</sup>

As carriers began using the slot exemptions permitted under AIR-21, the number of scheduled flight operations at LaGuardia began to far exceed the airport's capacity even under optimal operating conditions.<sup>6</sup> By the fall of 2000, carriers had already added over 300 scheduled flights at LaGuardia and planned to add even more.<sup>7</sup> With no new airport infrastructure or air traffic control procedures, overall airport capacity remained the same while the number of aircraft operations and delays soared. The average minutes of delay for all arriving flights at LaGuardia increased 144% from 15.52 minutes in March 2000 (the month before AIR-21 was enacted) to 37.86 minutes in September 2000.<sup>8</sup> The increase in delays at LaGuardia also affected flights at other airports and in

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<sup>3</sup> See 33 FR 17896 (Dec. 3, 1968); 34 FR 2603 (Feb. 26, 1969); cf. 14 C.F.R. §§ 93.121-93.133, 93.211-93.227 (2006).

<sup>4</sup> 49 U.S.C. § 41715(a)(2), enacted by Pub. L. No. 106-181, § 231, 114 Stat. 61, 106-10 (2000).

<sup>5</sup> 49 U.S.C. § 41716.

<sup>6</sup> The increase in scheduled operations at LaGuardia is described more fully at 66 FR 31731 (June 12, 2001).

<sup>7</sup> 71 FR 51361.

<sup>8</sup> Source: FAA's Aviation System Performance Metrics (ASPM).

adjacent airspace. By September 2000, flight delays at LaGuardia accounted for 25 percent of the nation's delays, compared to 10 percent for the previous year.<sup>9</sup>

In order to address the growing congestion at LaGuardia, the FAA intervened in November 2000. The FAA reduced the number of daily exemptions from the HDR at LaGuardia to 159 during peak operating hours and distributed the exemptions via lottery.<sup>10</sup> The 159 daily operations reflected an increase of almost eleven hourly operations above the limits in place before the statutory amendments. Even with the FAA's partial rollback of the number of exemption flights, LaGuardia is now operating at capacity during most hours, and continues to have a relatively serious delay problem.

Although LaGuardia lacks the capacity to handle additional flight operations beyond the current peak hour limits, the expiration of the HDR at LaGuardia as of January 1, 2007, will eliminate the scheduling and reservation mechanisms that currently sustain the airport's operational balance.<sup>11</sup> Accordingly, on August 29, 2006, the FAA proposed a new rule to maintain the number of operations at LaGuardia's current hourly limits.<sup>12</sup> An order that temporarily maintains LaGuardia's current operational limits during the interval between the High Density Rule's expiration and the effective date of the proposed replacement rule is necessary to avoid any increase in the number of operations or a significant rescheduling of existing flights that would cause unacceptable delay levels, as explained below in our discussion of the comments.

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<sup>9</sup> Calculated from FAA's Air Traffic Operations Network Database (OPSNET).

<sup>10</sup> 65 FR 69126 (Nov. 15, 2000). This was extended through December 31, 2006. 70 FR 36998 (June 27, 2005).

<sup>11</sup> The FAA maintains safe operations through the use of air traffic control procedures. Traffic management initiatives would be applied as needed but would result in significant aircraft and passenger delays.

<sup>12</sup> 71 FR 51360.

After considering the comments received on the proposed Order, the FAA has determined to adopt this Order. Under this Order, the FAA (1) maintains the current hourly limits on scheduled (75) and unscheduled (six) operations at LaGuardia during peak periods; (2) imposes an 80 percent minimum usage requirement for Operating Authorizations; (3) provides for a lottery to reallocate withdrawn, surrendered or unallocated Operating Authorizations; and (4) allows for trades and leases of Operating Authorizations for consideration for the duration of the Order. The FAA is not allowing carriers to buy and sell Operating Authorizations during the term of this Order. The FAA also is not restricting the use of any Operating Authorizations for flights to certain destinations or flights with aircraft of a particular size.

## II. Discussion of Written Submissions and the Final Order

In response to our request for written comments, 18 respondents expressed views on the FAA's proposed Order. The respondents included 10 air carriers (American Airlines, US Airways, Delta Air Lines, Northwest Airlines, Colgan Air, United Airlines, Republic Airways Group (Republic Airline, Chautauqua Airlines, Shuttle America Corp.), and AirTran Airways), three air carrier organizations (Regional Airline Association (RAA), Air Carrier Association of America (ACAA) and Air Transport Association of America (ATA)), two airports (Akron-Canton Airport and Newport News/Williamsburg International Airport), the Port Authority of New York and New Jersey (Port Authority), City of Canton, the Medina County Ohio Economic Development Corporation, the Stark Development Board, Inc, and Indiana Senator Richard G. Lugar and Congresswoman Julia M. Carson.

### *Need for Limits on LaGuardia Flight Operations*

As explained in the proposed Order, the FAA continues to believe that carrier demand for LaGuardia substantially exceeds the number of flights that can be operated at the airport without creating unacceptable delays. Commenters generally agreed that LaGuardia flights should be limited, and no commenter disputed the FAA's tentative conclusion under the proposed Order that the existing hourly limits should be maintained. The Port Authority, for example, stated, "There is a lesson to be learned from the extreme congestion, bordering on gridlock, that took place after the enactment of AIR-21 -- LaGuardia most certainly would once again face crippling delays and congestion, if no form of operational limitation (or other demand management tool) is in place when the HDR expires at the end of the year." Port Authority Comments at 4. This Order accordingly adopts the proposed hourly limits on scheduled operations at LaGuardia.

#### *Term of the Order*

By statute, the HDR expires as of January 1, 2007. Therefore, the FAA proposed the Order take effect on January 2, 2007. Multiple air carrier slot and slot exemption transactions expire on December 31, 2006, as do the FAA limits on AIR-21 slot exemptions. If the effective date of January 2, 2007, were adopted, as proposed, carriers would have to enter into one-day slot transfers to bridge the break in dates or adjust their schedules to meet their slot holdings. In order to provide the most seamless transition between the HDR and AIR-21 slot exemption rules and this Order and to avoid additional administrative burdens for a one-day period, the Order will take effect on January 1, 2007.

The FAA also is modifying the Order's termination date. Based on the original rulemaking schedule established for the Congestion Management Rule for LaGuardia, the

FAA proposed that the Order terminate on September 30, 2007. Several air carriers, as well as ATA and RAA, commented on the proposed expiration date of the Order. They assert that the airlines would benefit if the duration of the Order were tied directly to the effective date of the final rule replacing the Order rather than the FAA establishing a fixed date, which could be subject to extension if the rule is not published as planned. Commenters also emphasized that the air carriers will need time to transition from one regulatory regime to another, and any transition should occur when the carriers make their seasonal schedule changes.

The FAA recognizes that carriers require sufficient notice to plan schedules, market and sell tickets, and allocate aircraft, crew and airport resources. The FAA seeks to ensure that carriers are afforded adequate time to minimize disruptions caused by implementation of a new rule at LaGuardia, and we recognize that adjusting to a new rule will be more difficult for carriers if the adjustment must occur in the middle of a scheduling season. Thus, as specifically requested by United, American, Northwest, and ATA, the Order will expire at the first change of scheduling season, as defined in 14 CFR, part 93, subpart B, occurring no less than 90 days after the issuance of a final rule.

While the FAA is extending the term of this Order, the FAA recognizes the need to complete the rulemaking, because the final decision in that proceeding should establish a more rational basis for the regulation of flight operations at LaGuardia. The rulemaking process will give the FAA and the commenters a better opportunity to consider and develop a better long-term policy on LaGuardia operations.

#### *Hours of the Cap and Hourly Limits*

The FAA proposed a limit of 75 scheduled operations per hour, the current cap on scheduled operations in effect under the slot rules. This limit is based on the optimal airport runway capacity of 81 operations per hour, including unscheduled flights. The FAA is adopting this limit under the final Order, and as discussed later, will assign Operating Authorizations for arrival and departures on a 30-minute basis consistent with current practices. The FAA's Air Traffic Organization may adjust the half-hour arrival and departure totals within the hourly limit based on operating conditions.

The FAA made a preliminary determination to apply the operational limits at LaGuardia beginning at 6:30 a.m. on weekdays rather than at the historic 6 a.m. start under the HDR. American and US Airways requested the Order's limitations begin earlier, at 6 a.m., expressing concern that additional operations in the 6:00 to 6:29 a.m. half-hour, if unrestricted, might cause unacceptable delays. The FAA reviewed the potential delay scenarios with unconstrained operations before 6:30 a.m. and agrees that starting the limitations at 6:30 a.m. each weekday would create a risk of serious delays. Although overnight aircraft parking positions are a constraint, there is the potential that greater utilization of existing overnight positions or the establishment of new ones might facilitate additional morning departures. Therefore, the FAA concludes that beginning the limits at 6:00 a.m. hour is warranted.<sup>13</sup> For conformity, the FAA also will begin the limits for unscheduled operations at 6:00 a.m.

The FAA also considered the Port Authority's comment that the limits should apply on Saturday mornings before noon. We recognize that traffic levels have increased on Saturday mornings, but our review indicates that airport demand remains



within the airport's capacity. The FAA will continue to monitor operations and congestion during the non-controlled hours at LaGuardia. Should a problem begin to materialize, the FAA believes that there will be sufficient time to adopt an amendment to this Order that would prevent undue congestion.

*Assignment of Operating Authorizations*<sup>14</sup>

Under ordering paragraph 3 of the proposed Order, an Operating Authorization would be assigned to the air carrier that holds the equivalent slot or slot exemption authority, or if a non-air carrier holds such authority to the air carrier assigned the operational authority by the non-air carrier. The FAA will use the records of allocations under the High Density Rule or FAA slot exemptions rules as of January 1, 2007.

The FAA has determined to adopt its proposal to assign Operating Authorizations only to carriers. The FAA believes that it can more easily and effectively administer the Operating Authorization regime if the operating rights are held only by carriers. Because this provision raised several questions of applicability, the FAA provides the following clarification.

Each slot currently has a "holder" status and an "operator" status. The same air carrier might be both holder and operator of a slot (or Operating Authorization). In many cases, however, the air carrier holder transfers the operator status to another carrier on a

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<sup>13</sup> We recognize that the FAA's proposed rule for LaGuardia would begin limits at 6:30 a.m. on weekdays. The FAA expects to complete a similar review of capacity and possible delay implications in the context of that proceeding.

<sup>14</sup> Proposed Ordering Paragraph 4 stated that FAA would assign identification numbers to each Operating Authorization. These numbers would be used for administrative purposes such as identifying Operating Authorizations for trades and transfers and for usage monitoring. Under the HDR and the Chicago O'Hare final rule, the FAA also used randomly assigned identification numbers for potential withdrawal if capacity reduction is required to meet FAA's operational needs. While the FAA is not specifically adopting a similar withdrawal priority mechanism for the purposes of this Order, Operating Authorizations remain subject to FAA control and may be withdrawn to meet FAA's operational needs. Should capacity be reduced on an on-going basis, the FAA will adopt procedures to withdraw Operating Authorizations.

one-for-one basis for a slot at another time, on a lease, or for operation by a regional/commuter affiliate air carrier. Under the HDR, some slots also are held by non-air carrier entities who arrange for a carrier to operate the slots. Historically, transfer of “operator” status from a non-air carrier holder to an air carrier has been for a multi-year period.

If a carrier is using a slot “held” by another carrier, the Operating Authorization will be assigned to the carrier who actually holds the slot, *i.e.*, the air carrier that has operational authority, assigned by the FAA, to conduct scheduled operations at LaGuardia on a particular day of the week, during a specific time of the day. In other words, carriers that currently “hold” slots or slot exemptions will continue to “hold” the equivalent Operating Authorizations under the Order even if those authorizations are currently leased or licensed to other airlines for scheduled flight operations at LaGuardia. If a non-air carrier holds the slot, the FAA will assign the Operating Authorization to the carrier that was directly authorized by the non-air carrier to operate the slot even if that carrier subsequently transferred the slot temporarily to another carrier under the HDR. As discussed under the following “Secondary Market” section, the FAA is prohibiting the buying and selling of Operating Authorizations; therefore, the “holder” status remains with the initially assigned carrier under this Order unless an Operating Authorization is returned or withdrawn by FAA for nonuse.

In the case of AIR-21 slot exemptions allocated for service between LaGuardia and small hub and non-hub airports, the initial allocations were made to marketing air carrier groups including American/American Eagle, Delta/Delta Connection, Northwest/Northwest Airlink, and US Airways/US Airways Express. The particular air

carrier providing the service within those groups may have changed from time to time but the marketing carrier has remained the same. Therefore, in these cases, the FAA will assign Operating Authorizations to the primary marketing air carrier, *i.e.*, American Airlines, Delta Air Lines, Northwest Airlines, and US Airways.

ATA asked whether the FAA would interpret an air carrier holder as including subsidiaries or affiliates of certificated air carriers that now hold slots. ATA provided the following example: Calair L.L.C., a wholly-owned subsidiary of Continental Airlines, currently holds the slots under the HDR that are operated by Continental. Calair is not a certificated air carrier. As indicated in the proposed LaGuardia Order and similar rulemaking proceedings for Chicago O'Hare, the FAA believes that the assignment of operational authority under FAA adopted capacity limitations should be restricted to air carriers. In fact, the FAA did not assign slots to non-air carriers under the HDR—that was accomplished solely through carrier transactions in the secondary market. However, the FAA will look at the chain of ownership and see if there is a direct relationship between the affiliate or subsidiary to a certificated air carrier. Thus, in this example and under the provisions of this Order, Calair cannot receive the initial assignment of Operating Authorizations because it is not a certificated air carrier; rather the Operating Authorizations would be given to Continental because it would be the air carrier with the most direct relationship with Calair. In instances where the affiliate or subsidiary organization is owned by more than one air carrier, the air carriers will have to notify the FAA prior to the assignment of Operating Authorizations whom they want designated as the “holder”.

Alternatively, if a carrier is operating a slot that is held by an entity that is not a certificated carrier, and the holder has no direct relationship with a parent airline company, the Operating Authorization will be assigned to the carrier designated as the operator by the non-air carrier holder under the HDR. This recognizes that a non-air carrier slot holder cannot operate the slots because actual flight operations must be by an air carrier. The FAA does not agree with certain commenters' claims that this allocation of Operating Authorizations will interfere with on-going business relationships. Carriers and other persons have long known that any rights held under the slot rules would end on December 31, 2006. The statutory termination date for the slot rules has meant that all financial and security interests in slots will inevitably end on that date, so no one could have reasonably expected that existing business and financial arrangements based on the slot rules could continue after this year. In any event, this Order is not intended to prohibit an air carrier from contractually arranging to pledge an interest in an Operating Authorization to a person, for use as collateral or otherwise, for the duration of the Order.

The Republic Group asked that trusts be recognized under the Order. Specifically, we were asked to allow for Operating Authorizations to be held by trust so long as the beneficial ownership of the Operating Authorizations is held by an air carrier. The FAA is unsure how these types of trust operate in the market place, how they would differ from other arrangements whereby non-air carriers might seek to hold Operating Authorizations, what documentation might be required in order to meet any standards adopted by the FAA, and whether alternative agreements could readily be crafted to replace a trust. The Republic Group did not provide sufficient background information in

order for us to make an educated decision distinguishing the requested beneficial trust scenario from other potential non-air carrier holders.

### *Secondary Market*

The slot rules have a buy-sell provision that allows carriers to buy and sell slots for consideration. The recently-adopted rules limiting operations at O'Hare permit buying and selling of operating rights ("arrival authorizations"), but only under a blind-auction procedure overseen by the FAA.<sup>15</sup> Our proposal on long-term rules for LaGuardia proposed a similar blind-auction requirement but also asked for comment on whether carriers should be able to buy and sell operating rights directly, as they have been able to do under the slot rules. Our order, however, proposed to allow carriers only to engage in one-for-one trades of Operating Authorizations and to lease Operating Authorizations, but stated that any such trade or lease would terminate when the Order terminated.

All air carriers and carrier associations, except for AirTran and ACAA, requested that the FAA permit the transfer and trading of Operating Authorizations without restriction. Commenters pointed to the FAA rules permitting such exchanges under the HDR and a recent amendment to the FAA Order on scheduling limitations at Chicago O'Hare.<sup>16</sup> AirTran and ACAA, on the other hand, supported limits on the buying/selling and leasing of Operating Authorizations because they believe it would increase competition. At a minimum, they argued that any sales of Operating Authorizations must be made through a blind-auction process similar to the procedures required under the

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<sup>15</sup> 71 FR 51382 (August 29, 2006).

<sup>16</sup> 71 FR 60600 (October 13, 2006).

secondary market for arrival authorization at Chicago O'Hare and the proposed rule for LaGuardia.

The FAA has considered a secondary market that permitted the purchase and sale of Operating Authorizations. We have assessed whether we should allow leases, trades, and transfers to extend beyond the duration of the Order. We also have considered whether a blind transfer mechanism similar to the one adopted for Chicago O'Hare would address the concerns raised by ACAA and AirTran even if Operating Authorizations were not subject to expiring lives under the Order.

The FAA has decided to permit leases and trades of Operating Authorizations provided that all Operating Authorizations revert no later than the expiration of this Order.<sup>17</sup> Permanent sales, purchases, or transfers of Operating Authorizations will not be permitted. We also are clarifying that carriers may offer any form of consideration in the lease and trade transactions negotiated under this Order.

This Order is not intended to create a long-term solution for LaGuardia congestion. Because the Operating Authorizations established under this Order should not create long-term rights at LaGuardia, the FAA does not wish to allow or encourage carriers to engage in transactions that assume that a carrier purchasing Operating Authorizations, or leasing them under a long-term lease, will acquire potential rights to continue operating flights after this Order is replaced by a new rule. The FAA determined that only through a limited secondary market permitting temporary transfers of Operating Authorizations could we protect various aspects of the proposed rule for LaGuardia, including the various proposals regarding small community access and the

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<sup>17</sup> Because the FAA is adopting this Order without a fixed expiration date, the latest reversion date of any approved leases, trades, or other transfers will coincide with the Order's expiration.

initial assignment of Operating Authorizations. The FAA is aware there is potential for changes to small community service levels during the life of the Order. Although the FAA proposed in the NPRM a category of Operating Authorizations reserved for use to small communities based on October 2006 services, we believe the likelihood of small community service change increases if we were to permit the permanent buying and selling of Operating Authorizations. While prohibiting the permanent or long-term transfer of Operating Authorizations under the Order does not prevent small community impacts, it does reduce the likelihood.

#### *Minimum Use Requirements*

The FAA proposed that Operating Authorizations be subject to a minimum use requirement of 80 percent over a consecutive two-month reporting period. Operating Authorizations not meeting this minimum would be withdrawn by the FAA and would be reallocated using a lottery. Most commenters supported an 80 percent use or lose requirement in order to ensure the use of the airport's capacity. No one opposed having a minimum-use requirement. The Port Authority, however, supported increasing the minimum usage to 90 percent. Otherwise the FAA would be allowing a carrier to keep an afternoon Operating Authorization that it used for only 4.8 flights per week when the slot rules now require that the equivalent slot be used for 5.6 flights per week.

The FAA has decided to adopt the proposed 80 percent minimum usage requirement. Our experience in applying the HDR, as well as information on cancellations presented by the Port Authority, is that carriers typically operate slots well in excess of 80 percent. In particular, weekday slots under the HDR have historically been used more than weekend ones. We have no reason to believe carrier usage patterns

will not continue for the duration of this Order. Therefore, absent any demonstrated changes in service patterns, we are reluctant to increase the usage requirement beyond the proposed 80 percent for the duration of this Order. We note that the FAA's minimum-use requirement in its O'Hare rules adopted the 80 percent level and that level is prescribed at slot-controlled airports throughout much of the world.

United Airlines requested clarification on whether a carrier holding an Operating Authorization for scheduled service could use it for unscheduled service, and if so, report it on use or lose reports. The FAA clarifies that an air carrier may do as United seeks—operate charters and other unscheduled services and have it count toward minimum usage.

The FAA also proposed that any Operating Authorizations withdrawn for failing to meet the minimum usage requirements would be reallocated by lottery using the procedures in 14 CFR § 93.225. The FAA is adopting this procedure with one change to provide that any Operating Authorizations assigned by lottery to new entrants and limited incumbents under the Order would not automatically revert to the FAA at the expiration of this Order.<sup>18</sup> A new entrant/limited incumbent carrier might choose not to initiate service under the Order if it could not continue that service after a final rule. This would be contrary to past FAA actions to promote new entry and competition.

Finally, the proposed Order provided that the Administrator could waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition

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<sup>18</sup> The FAA recognizes this conflicts with the proposed rule for LaGuardia which uses slot holdings and operations during October 1-6, 2006, as the base for initial assignment of Operating Authorizations at the effective date of the rule. Similarly, the FAA recognizes that a carrier that has an Operating Authorization withdrawn for nonuse during the duration of the Order should not be assigned an equivalent Operating Authorization at the effective date of the rule. The FAA will resolve these issues during our rulemaking proceedings.



beyond the control of the carrier and which exists for a period of 5 consecutive days or more. We adopt the proposal to permit usage waivers based on unusual circumstances.

*Provisions for New Entrants and Limited Incumbents*

AirTran and ACAA requested several modifications to the proposed Order that would give limited incumbent air carriers and new entrants a better opportunity to obtain Operating Authorizations. As discussed elsewhere in this Order, they also urged the FAA to adopt other provisions, such as a blind-auction procedure for any sales of Operating Authorizations that would give airlines with a smaller presence at LaGuardia a better chance to compete with the airport's dominant carriers. Insofar as awarding additional Operating Authorizations to smaller carriers is concerned, ACAA asked that the FAA:

- Withdraw ten percent of all slots held by carriers holding more than forty (40) slots and distribute those slots to limited incumbents operating aircraft with at least 110 seats;
- Allow limited incumbent carriers that operated slots held by other carriers during the October 1-6, 2006, period for full-size aircraft service to small communities to continue using those slots until a final rule is issued.

ACAA argued that its reallocation proposal was reasonable, because, among other things, the Order proposed to end the requirements that the major carriers use their slot exemptions only for flights operated to smaller communities with smaller aircraft.

AirTran further asks that the FAA provide at least ten additional Operating Authorizations to each limited incumbent carrier to operate full-size jets. AirTran did not indicate how the FAA would create these authorizations while maintaining our cap on operations. Alternatively, they asked that we withdraw Operating Authorizations from other larger carriers. Senator Richard G. Lugar and Congresswoman Julia M. Carson

supported an allocation of additional operating authority to permit AirTran to serve the LaGuardia/Indianapolis market.

The reallocations proposed for by ACAA and AirTran incorporate elements of the NPRM that are currently subject to comment. The rulemaking, not this Order, is intended to establish flight restrictions for the long term at LaGuardia. In the rulemaking the FAA has proposed that Operating Authorizations expire in a periodic fashion and be subject to reallocation. The pending rulemaking will give interested persons a better opportunity to present their economic and policy views on potential reallocation and withdrawal issues, and enable the FAA to consider such matters more fully on the basis of a better record. The FAA accordingly prefers to consider in that proceeding whether LaGuardia operating rights should be reallocated.

#### *Small Community Service*

The Order did not propose to designate Operating Authorizations that would be restricted to small community service or limited to smaller aircraft. The HDR air carrier and commuter slot categories would be merged into a single category of Operating Authorizations. Likewise, AIR-21 restrictions granting certain slot exemptions for services to small hub and non-hub airports using smaller aircraft would expire along with the HDR. Therefore, carriers could choose to adjust existing schedules and markets during the duration of this Order without regard to the market and aircraft restrictions that existed under the HDR. In addition to several proposals that urge the FAA to grant Operating Authorizations for service to specific communities, as discussed below, several commenters -- AirTran, Colgan Air, ACAA, and the Port Authority -- argued that the FAA should adopt provisions that would protect service to small community airports

while the Order is in effect. Their comments included suggestions such as retaining the restrictions requiring AIR-21 slot exemptions to be used for flights to small hub and non-hub airports.

The FAA shares the concerns about continuing LaGuardia service to smaller communities. The commuter slot pool under the HDR was established, in part, to recognize historic service to small communities and provide a level of protection for that service by restricting the use of the slots with larger turbojet aircraft typically used for larger communities. The AIR-21 slot exemption authority reflected congressional interest for increased service opportunities to small communities seeking access to LaGuardia, and the FAA's lottery system for allocating those exemptions provided for an equitable distribution of exemptions between carriers serving small communities and new entrants.

The pending rulemaking includes three options for ensuring that small communities will continue to have service to LaGuardia. The number and timing of operations conducted by air carriers to the various small hub and non-hub airports during October 1-6, 2006, would be the base period for establishing the small community pool under the final rule. We expect to receive comments under that proceeding as to the appropriate level of protection for small communities served from LaGuardia Airport. Therefore, the FAA did not propose a specific set-aside for small communities under the Order since the appropriateness and make-up of such a designation was already the subject of a rulemaking that is intended to be more comprehensive and long-term. Some of the comments on the proposed Order suggest the FAA should continue the AIR-21 limits on small hub and non-hub airport slot exemptions while the comments on the

NPRM are considered. Absent those restrictions, carriers would be free to use larger aircraft to serve larger size airports and might discontinue the small community services gained under AIR-21. While the FAA understands there is a potential for this to occur, the final rule, in all probability, would use for its initial assignment of Operating Authorizations a base period when various protections existed for small community service. Thus, carriers might alter service plans to small hub and non-hub airports during the Order only to face a final rule designating certain Operating Authorizations for historic small community service levels. Carriers may consider the benefits of schedule stability at smaller airports during the duration of this Order. Furthermore, the FAA agrees with the Port Authority's suggestion that it should monitor changes in small community service during the term of this Order. The FAA intends to do so.

Finally, as indicated earlier, the FAA is not increasing the proposed hourly limits on flight operations in order to ensure that small communities would continue to have all of the service at LaGuardia that they have had in the past. Such an accommodation would increase delays and fail to meet the congestion management objectives of this Order. The airport's capacity limitations prevent us from authorizing additional flights, even when they would serve a worthy purpose.

#### *Flights to Specific Communities*

Several commenters urged the FAA to adopt provisions that would protect service to small community airports while the Order is in effect. Newport News/Williamsburg Airport and Akron-Canton Airport each filed comments requesting that the FAA allocate two Operating Authorizations to each airport. They would allow AirTran to reinstate roundtrip flights that it can no longer operate because it does not hold or lease the

necessary slots, and accordingly, will not be assigned operating authorizations for such operations under this Order.<sup>19</sup>

The FAA is unwilling in this Order to create additional Operating Authorizations to ensure that specific communities obtain additional service to LaGuardia. While the FAA understands the desire of the Akron-Canton and Newport News/Williamsburg groups to maintain the recent air service levels between LaGuardia and their respective airports, the FAA has not used congestion management rules to provide service to specific communities. Like a slot under the HDR, an Operating Authorization under the Order is the operation authority assigned by the FAA to a carrier to conduct a scheduled arrival or departure operation and has no specific city-pair limitations. To honor the request made by these airports would be tantamount to a radical change in the congestion management program. Further, unlike the situation at Ronald Reagan Washington National Airport, where the Department of Transportation is directed to grant certain slot exemptions for “selected routes” beyond the perimeter and to airports within the perimeter,<sup>20</sup> there is not such statutory basis for the FAA to require that a carrier operate to a certain market from LaGuardia. The FAA therefore declines to do adopt the suggestion of Akron-Canton and Newport News/Williamsburg.

#### *Unscheduled Operations*

In addition to limits on scheduled operations, the FAA proposed adopting limits for unscheduled operations to ensure that demand is spread reasonably throughout the day. The FAA proposed the same hourly limits that applied under the HDR using similar reservation procedures described in FAA Advisory Circular 93-1, “Reservations for

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<sup>19</sup> The City of Canton, the Medina County Economic Development Corporation, and the Stark Development Board, Inc. among others also support the request.

Unscheduled Operations at High Density Traffic Airports.” The FAA’s Airport Reservation Office at the David J. Hurley Air Traffic Control System Command Center would manage the reservation process using the existing e-CVRS system.

No comments were received opposing the establishment of the reservation requirements and proposed procedures for allocating reservations for unscheduled flights. United Airlines commented that the number of hourly reservations established for unscheduled operations conflicts with other stated agency objectives of ensuring efficient utilization of limited airport resources and increasing passenger throughput. We proposed the historic set aside of six reservations for unscheduled operations and adopt this allocation under this final Order, because it is consistent with the treatment of the scheduled operations during the time this order will be temporarily in place. As a result, the FAA is adopting the proposed allocation for unscheduled flights.

United Airlines also requested clarification that it could conduct charters and other unscheduled operations using its Operating Authorizations for scheduled service. We agreed and addressed United’s comment in the section on Minimum Use.

The FAA is adopting the proposed limits and reservation procedures with minor editorial changes. Information on procedures for obtaining the appropriate reservations for unscheduled flights will be available prior to the effective date of this Order via the Internet on the FAA’s website at <http://www.fly.faa.gov/ecvrs>.

### III. Conclusion:

On September 11, 2006, the FAA issued a proposed Order, which solicited written views on the FAA’s tentative determination to place temporary limitations on flight operations at LaGuardia Airport. After considering the responses, the FAA has

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<sup>20</sup> 49 U.S.C. § 41718 (a) and (b).

determined to issue a final Order adopting operating limitations at New York LaGuardia Airport.

*A. Scheduled Operations:*

With respect to scheduled operations at LaGuardia:

1. The final Order governs scheduled arrivals and departures, except helicopters, at LaGuardia from 6:00 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12:00 noon through 9:59 p.m., Eastern Time, Sunday. Seventy-five (75) Operating Authorizations are available per hour and will be assigned by the FAA on a 30-minute basis.

2. The final Order takes effect on January 1, 2007, and will expire at the first change of scheduling season, as defined in 14 CFR, part 93, subpart B, occurring no less than 90 days after the issuance of a final rule regulating congestion at LaGuardia.

3. The FAA will assign operating authority to conduct an arrival or a departure at LaGuardia during the affected hours to the air carrier that holds equivalent slot or slot exemption authority under the High Density Rule or FAA slot exemption rules as of December 31, 2006; to the primary marketing air carrier in the case of AIR-21 small hub/non-hub airport slot exemptions; or to the air carrier operating the flights as of December 31, 2006, in the case of a slot held by a non-air carrier. If the slot is held by a subsidiary or affiliate of an air carrier, the FAA will assign the operating authority to the carrier that has the most direct relationship with that non-air carrier holder. The FAA will not assign operating authority under the final Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority to conduct scheduled passenger service and FAA operating authority under 14 C.F.R. part 121, 129,

or 135. The Chief Counsel of the FAA will be the final decision maker regarding the initial assignment of Operating Authorizations.

4. For administrative tracking purposes only, the FAA will assign an identification number to each Operating Authorization.

5. An air carrier can lease or trade an Operating Authorization to another carrier for any consideration, not to exceed the duration of the final Order. Notice of a trade or lease under this paragraph would be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267-7277 or e-mail [7-AWA-Slotadmin@faa.gov](mailto:7-AWA-Slotadmin@faa.gov), and must come from a designated representative of each air carrier. The air carriers are required to receive written confirmation from the FAA prior to operating under the traded operating authority.

6. Every air carrier holding an Operating Authorization must forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier along with a listing of the Operating Authorizations actually operated for each day of the 2-month reporting period within 14 days after the last day of the 2-month reporting period beginning January 1 and every 2 months thereafter. Any Operating Authorization not used at least 80 percent of the time over a two-month period will be withdrawn by the FAA. The FAA Administrator can waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which exists for a period of 5 consecutive days or more.

7. In the event that Operating Authorizations are withdrawn for non-use, surrendered to the FAA or are unassigned, the FAA will determine whether any of the available Operating Authorizations should be reallocated. If so, the FAA will conduct a



lottery using the provisions specified under 14 CFR § 93.225. The FAA may retime an Operating Authorization prior to reallocation in order to address operational needs. When the final Order expires, any Operating Authorizations reassigned under this paragraph, except those assigned to new entrants or limited incumbents, will revert to the FAA for reallocation according to the reallocation mechanism prescribed in the final rule that succeeds the final Order.

8. The FAA will enforce the final Order through an enforcement action seeking a civil penalty under 49 U.S.C. § 46301(a). An air carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. § 632, would be liable for a civil penalty of up to \$25,000 for every day that it violates the limits set forth in the final Order. An air carrier that is a small business as defined in the Small Business Act would be liable for a civil penalty of up to \$10,000 for every day that it violates the limits set forth in the final Order. The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. §§ 46106, 46107, seeking to enjoin any air carrier from violating the terms of the final Order.

#### *B. Unscheduled Operations:*<sup>21</sup>

With respect to unscheduled flight operations at LaGuardia:

1. The final Order applies to all operators of unscheduled flights, except helicopter operations, at LaGuardia from 6:00 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12:00 noon through 9:59 p.m., Eastern Time, Sunday.

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<sup>21</sup> Unscheduled operations are operations other than those regularly conducted by an air carrier between LaGuardia and another service point. Unscheduled operations include general aviation, public aircraft, military, charter, ferry, and positioning flights. Helicopter operations are excluded from the reservation requirement. Reservations for unscheduled flights operating under visual flight rules (VFR) are granted when the aircraft receives clearance from air traffic control to land or depart LaGuardia. Reservations for unscheduled VFR flights are not included in the limits for unscheduled operators.

2. The final Order takes effect on January 1, 2007, and will expire at the first change of scheduling season occurring no less than 90 days after the issuance of a final rule regulating congestion at LaGuardia.

3. No person can operate an aircraft other than a helicopter to or from LaGuardia unless the operator has received, for that unscheduled operation, a reservation that is assigned by the David J. Hurley Air Traffic Control System Command Center's Airport Reservation Office (ARO). Additional information on procedures for obtaining a reservation is available via the Internet at <http://www.fly.faa.gov/ecvrs>.

4. Six (6) reservations are available per hour for unscheduled operations at LaGuardia. The ARO will assign reservations on a 30-minute basis.

5. The ARO receives and processes all reservation requests. Reservations are assigned on a "first-come, first-served" basis, determined as of the time that the ARO receives the request. A cancellation of any reservation that will not be used as assigned is required.

6. Filing a request for a reservation does not constitute the filing of an instrument flight rules (IFR) flight plan, as separately required by regulation. After the reservation is obtained, an IFR flight plan can be filed. The IFR flight plan must include the reservation number in the "remarks" section.

7. Air Traffic Control will accommodate declared emergencies without regard to reservations. Non-emergency flights in direct support of national security, law enforcement, military aircraft operations, or public-use aircraft operations will be accommodated above the reservation limits with the prior approval of the Vice President, System Operations Services, Air Traffic Organization. Procedures for obtaining the

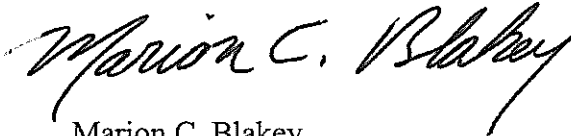
appropriate reservation for such flights are available via the Internet at

<http://www.fly.faa.gov/ecvrs>.

8. Notwithstanding the limits in paragraph 4, if the Air Traffic Organization determines that air traffic control, weather, and capacity conditions are favorable and significant delay is not likely, the FAA can accommodate additional reservations over a specific period. Unused Operating Authorizations can also be temporarily made available for unscheduled operations. Reservations for additional operations are obtained through the ARO.

9. Reservations cannot be bought, sold, or leased.

Issued in Washington, DC, on DEC 13 2006

A handwritten signature in black ink, reading "Marion C. Blakey". The signature is fluid and cursive, with the first name "Marion" and last name "Blakey" clearly legible.

Marion C. Blakey  
Administrator